



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Electronic Mail
Return Receipt Requested

Drew Sanocki
CEO
AutoAnything, Inc.
6602 Convoy Ct. Ste, 200
San Diego, CA 92111
dsanocki@autoanything.com

Re: Notice of Violation of the Clean Air Act

Dear Mr. Sanocki:

The United States Environmental Protection Agency (EPA) has investigated and continues to investigate AutoAnything, Inc., (AutoAnything) for compliance with section 203(a) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a), and its implementing regulations. As detailed in this Notice of Violation (NOV), the EPA has determined that AutoAnything sold parts or components for motor vehicle engines that bypass, defeat, or render inoperative devices or elements of design of motor vehicles that were installed by the original equipment manufacturer (OEM) to enable the motor vehicles to comply with the CAA emission standards. EPA has also determined that AutoAnything knew, or should have known, that these parts or components were offered for sale or installed for such use or put to such use. Therefore, AutoAnything violated section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

Law Governing Alleged Violations

This NOV arises under Part A of Title II of the Act, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws were enacted to reduce air pollution from mobile sources of air pollution. In creating the Act, Congress found, in part, that “the increasing use of motor vehicles . . . has resulted in mounting dangers to the public health and welfare.”¹ Congress’ purpose in creating the Act, in part, was “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.”²

The CAA defines a “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” Section 216(2) of the CAA, 42 U.S.C. § 7550(1). In addition, the

¹ CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2).

² CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).

exclusion and exemption of motor vehicle and motor vehicle engine regulations clarify that [f]or the purpose of determining the applicability of section 216(2) of the CAA, a vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one of more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle: (1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or (2) The vehicle lacks features customarily associated with safe and practical street or highway use, ... ; or (3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely. . . . 40 C.F.R. § 85.1703.

The CAA makes it a violation

for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

CAA § 203(a)(3)(B), 42 U.S.C. § 7522(a)(3)(B); 40 C.F.R. § 86.1854-12(a)(3)(ii). It is also a violation to cause any of the foregoing acts. CAA § 203(a), 42 U.S.C. § 7522(a); 40 C.F.R. § 86-1854-12(a).

The CAA and the applicable regulations also prohibit any person from failing or refusing to make reports or provide information required under section 208 of the CAA, 42 U.S.C. § 7542. CAA § 203(a)(2), 42 U.S.C. § 7522(a)(2); 40 C.F.R. § 86.1854-12(a)(2)(i).

Finally, the CAA provides that persons subject to the requirements of the CAA, and the applicable regulations, shall establish and maintain records, and provide information, which EPA may require to determine whether the person has acted, or is acting, in compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a).

EPA Certification Program

EPA administers a certification program to ensure that every vehicle introduced into United States (U.S.) commerce satisfies applicable emission standards. Under this program, EPA issues certificates of conformity (COCs), and thereby approves the introduction of motor vehicles into U.S. commerce. To obtain a COC, a motor vehicle manufacturer must submit a COC application to the EPA for each test group of vehicles that it intends to enter into U.S. commerce. 40 C.F.R. § 86.1844-01. Motor vehicle manufacturers employ many devices and elements of design to meet emission standards to obtain COCs. “Element of design” means “any control system (*i.e.*, computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine.” 40 C.F.R. §§ 86.094-2 and 86.1803-01. For example, manufacturers employ certain hardware devices as emission control systems to manage and treat exhaust to reduce levels of regulated pollutants from being created

or emitted into the ambient air. For gasoline-fueled vehicles, these devices include use of a catalytic converter, and for diesel-fueled vehicles, these devices include diesel particulate filters (DPF), and the selective catalytic reduction (SCR) system.

Factual Background

AutoAnything advertises and offers for sale online certain parts or components for use on diesel trucks and light-duty motor vehicles that are manufactured by Dodge (Honda), General Motors Company (GM), Ford Motor Company (Ford), Chevrolet, and Fiat Chrysler (FCA) which bypass, defeat, or render inoperative a device or element of design that is used to control emissions on the motor vehicle. The parts and components that are the subject matter of this NOV are exhaust systems and electronics that have the effect to permanently or temporarily change, affect, bypass, defeat, or render inoperative a motor vehicle's emission control device or emission related part. The parts and components that are subject matter of this NOV are:

1. Exhaust systems that are used to eliminate a DPF, SCR system, or catalytic converter. These emission related components are the primary emission control components that are used to reduce toxic byproducts of burning fuel (e.g., nitrogen oxide, carbon monoxide, and hydrocarbons) to less hazardous byproducts such as carbon monoxide, water vapor, and nitrogen gases; and
2. Tuners that are used to reprogram the electronic control module (ECM) of gasoline and diesel fueled vehicles. The ECM is a computer and primary emission control component that acts as the brain of the engine control process. The ECM collects input signals from multiple sensor, e.g., revolutions per minute, engine temperature, air temperature, throttle position, manifold pressure, and crankshaft position. Based on the input signal and the fuel map(s) and spark timing map(s) programmed into the ECM, the ECM will send output signals to control the timing of the ignition spark, and the amount of fuel injected, which affects the fuel delivery and spark to each cylinder. By altering one or more these parameters, the devices and software allow the engine to generate more power, but frequently at the risk of increasing emissions of regulated pollutants.

On September 20, 2018, pursuant to section 208 of the CAA, EPA issued to AutoAnything an Information Request concerning, among other things, the exhaust parts and components AutoAnything offered for sale or sold since January 1, 2017, through the date of the letter. EPA received a response to the first Information Request on October 21, 2018, and on March 5, 2019, requested additional information. Based on AutoAnything's three-part response, dated March 19, 2019, April 2, 2019, and April 15, 2019, EPA makes the following determinations:

1. As described in the enclosed Table, between January 1, 2017, and September 20, 2018, AutoAnything offered for sale and sold 39 exhaust systems in violation of the CAA. These exhaust systems are used to bypass, defeat, or render inoperative the DPF, SCR system, and the catalytic converter in light-duty motor vehicles (the Subject Exhaust Systems). The Subject Exhaust Systems include turbo back pipes and downpipes.

2. As described in the enclosed Table, between January 1, 2017, and September 20, 2018, AutoAnything offered for sale or sold 231 Subject Tuners for use on GM, Ford, and FCA motor vehicles.

Alleged Defeat Device Violations

The Subject Exhaust Systems function as defeat devices by replacing and therefore rendering inoperative the motor vehicle's original exhaust system, which included a DPF, SCR system, or catalyst to control emissions. AutoAnything's response to the Information Request included installation instructions for the Subject Exhaust Systems. The instruction manuals instructed users to remove the OEM exhaust system, which included a DPF, SCR system, or catalyst and replace it with a Subject Exhaust system, which does not retain these emission components. For example, the instructions pertaining to the AFE Turbo Back Exhaust – MACH Force XP Series: Part number 49-43034, instructs the installer to "remove your stock exhaust" and install the AFE exhaust system, which does not include emission components.

Due to the design and purpose of the Subject Exhaust Systems as shown by AutoAnything's response to the Information Request, AutoAnything knew, or should have known, that the Subject Exhaust Systems were offered for sale or sold in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants.

Each of the Subject Exhaust Systems functions as a defeat device by bypassing, defeating, or rendering inoperative the motor vehicle's catalytic converter. In addition, many or all of the Subject Exhaust Systems sold by AutoAnything were designed and marketed for use on specific makes and models of Honda, GM, and Ford vehicles. Honda, GM, and Ford sought and obtained COCs from the EPA for these motor vehicles and engines. This certification unequivocally demonstrates that these vehicles and engines are "motor vehicles" and "motor vehicle engines" under the Act. AutoAnything knew, or should have known, that the Subject Exhaust Systems were offered for sale, sold, or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants from a motor vehicle or motor vehicle engine. AutoAnything's sale or distribution of the Subject Exhaust Systems between January 1, 2017, and October 21, 2018, constitutes 39 separate violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B).

The Subject Tuners function as defeat devices by rendering inoperative the motor vehicle's ECM certified design or original fuel and timing map calibrations that control emissions. Due to the design and purpose of the Subject Tuners, AutoAnything knew, or should have known, that the Subject Tuners were offered for sale, sold or installed in order to bypass, defeat, or render inoperative devices or elements of design that control emissions of regulated air pollutants. For example, for the Bully Dog Platinum tuners, no information was provided to establish a reasonable basis that the products they were selling would not adversely affect exhaust emissions.

Thus, AutoAnything's sale or distribution of 231 Subject Tuners between January 1, 2017 and October 21, 2018 constitutes 231 separate violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. 7522(a)(3)(B).

Based on the foregoing, AutoAnything committed 270 violations of section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) by offering for sale and selling 270 Subject Exhaust Systems and Subject Tuners.

Enforcement Authority

The EPA may bring an enforcement action for these violations under its administrative authority or by referring this matter to the United States Department of Justice with a recommendation that a civil complaint be filed in federal district court.³ Persons violating sections 203(a)(3)(A) or (B) of the Act, 42 U.S.C. §§ 7522(a)(3)(A) or (B), are subject to an injunction under section 204 of the Act, 42 U.S.C. § 7523, and a civil penalty of up to \$4,819 for each violation that occurred after November 2, 2015.⁴

The EPA is available to discuss this matter with you in further detail upon your request. Within 14 days of receipt of this NOV, please contact Nathan Dancher, Enforcement Officer, at (415) 972-3482 or dancher.nathan@epa.gov, or have your attorney contact Denise Leong, Assistant Regional Counsel, at (415) 972-3409 or leong.denise@epa.gov.

Sincerely,

Amy C. Miller
Director, Enforcement & Compliance Assurance
Division
U.S. Environmental Protection Agency, Region 9

Enclosure: Table

cc: Jessica Norris, Polsinelli LLP, jnorris@polsinelli.com (via email).

³ CAA §§ 204 and 205, 42 U.S.C. §§ 7523 and 7524.

⁴ CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. This civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended.

TABLE

AutoAnything Violation Table of CAA § 203 for the period 1/1/17-9/20/18 for offering for sale or sale of 270 Subject Exhaust Systems and Tuners

#	Part Number	Part Name	Quantity Sold
1	40420	Bully Dog GT Platinum Tuner	82
2	7015	SCT X4 Power Flash Programmer	78
3	40470	Bully Dog BDX Tuner	39
4	7416	SCT X4 Power Flash Programmer	13
5	5015P	SCT Livewire TS Performance Tuner & Monitor	12
6	40460B	Bully Dog GTX Tuner	6
7	5416P	SCT Livewire TS Performance Tuner & Monitor	1
8	S6104409	MBRP Exhaust - Turbo Back - XP Series Exhaust	2
9	PVC10	Pypes Downpipes - Cat Delete Pipes	2
10	S6126409	MBRP Exhaust - Turbo Back - XP Series Exhaust	2
11	DAL435	MBRP Exhaust - Downpipe	1
12	49-02003	AFE Exhaust - Turbo Back Exhaust - ATLAS Series	1
13	49-02007NM	AFE Exhaust - Turbo Back Exhaust - ATLAS Series	1
14	49-02047NM-1	AFE Exhaust - Turbo Back Exhaust - ATLAS Series	1
15	49-04035NM	AFE Exhaust - Down Pipe Back Exhaust - ATLAS Series	1
16	49-04054NM	AFE Exhaust - Down Pipe Back Exhaust - ATLAS Series	1
17	49-12009-1	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
18	49-42004	AFE Exhaust - Turbo Back Exhaust - MACH Force XP Series	1
19	49-42047-1B	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
20	49-42054-P	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
21	49-43034	AFE Exhaust - Turbo Back Exhaust - MACH Force XP Series	1
22	49-43035NM	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
23	49-43039NM	AFE Exhaust - Down Pipe Back Exhaust - MACH Force XP Series	1
24	49-44053-B	AFE Exhaust - Down Pipe Back Exhaust - MACH Force XP Series	1
25	49-44059-B	AFE Exhaust - Down Pipe Back Exhaust - Large Bore HD Series	1
26	49-44075-B	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
27	49-44075-P	AFE Exhaust - Turbo Back Exhaust - Large Bore HD Series	1
28	DS103A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
29	DS105409	ANSA Silverline Exhaust System - Turbo Back (409 Stainless)	1
30	DS105A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
31	FS104A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
32	FS504A	ANSA Silverline Exhaust System - Turbo Back (Aluminized)	1
33	1674	BBK Exhaust - Off-road Cat Delete Pipes	1
34	16900	Magnaflow Exhaust - Downpipe Back Exhaust - Performance Series	1

35	17922	Magnaflow Exhaust - Turbo Back Exhaust - Pro Series Stainless Steel	1
36	17974	Magnaflow Exhaust - Turbo Back Exhaust - Pro Series Stainless Steel	1
37	18982	Magnaflow Exhaust - Turbo Back Exhaust - Custom Builder Kit Series	1
38	S6004PLM	MBRP Exhaust - Downpipe Back - Performance Series Exhaust	1
39	S61160BLK	MBRP Exhaust - Turbo Back - Black Series Exhaust	1
40	S6126AL	MBRP Exhaust - Turbo Back - Installer Series Exhaust	1
41	S6128409	MBRP Exhaust - Turbo Back - XP Series Exhaust	1
42	S6212PLM	MBRP Exhaust - Turbo Back - PLM Series Exhaust	1
43	S62240BLK	MBRP Exhaust - Turbo Back - Black Series Exhaust	1
		TOTAL	270